



Department of Energy
Grand Junction Projects Office
Post Office Box 2567
Grand Junction, Colorado 81502-2567

August 6, 1991

Mr. George G. Warnock
Todilto Exploration and
Development Corporation
311 Washington Street SE
Albuquerque, New Mexico 87108

SUBJECT: AT(05-1)-ML-60.8-NM-B-1

Dear Mr. Warnock:

I have received a copy of your July 31, 1991 letter to Carl Freytag and copies of your correspondence with the Environmental Protection Agency (EPA). Based on my review of the correspondence and discussions with the appropriate EPA and Department of Energy (DOE) personnel, the following comments are proffered.

The DOE is only concerned with addressing the issues on the subject lease property, which is described as the southeast quarter and the south half of the north half of Section 13, Township 13 North, Range 11 West, New Mexico Principal Meridian located in McKinley County, New Mexico. This parcel was withdrawn from the public domain by Public Land Order 964 for the exclusive use of the Atomic Energy Commission. As the successor agency, the DOE has assumed those rights. Therefore, any assets in the form of mineral deposits reside with the DOE. Your rights as the Lessee are conditioned upon the DOE granting you the right to explore, develop, mine and remove deposits of uranium and associated minerals in exchange for royalties paid to the DOE. These rights are further conditioned by DOE acceptance of the mining and exploration plans; environmental restoration activities; and, the performance bond.

Article VIII entitled "Use of Surface," paragraph (b), further states in part that, "The lands leased hereunder shall at all times be subject to other lawful uses heretofore or hereafter granted by the Government...." It is the DOE interpretation that the actions of the EPA acting pursuant to the Comprehensive Environmental Response, Compensation and Liability Act response action addressing the Agency for Toxic Substance and Disease Registry health advisory are within the scope of this article. However, through my negotiations with the EPA and Department of Interior, a plan of corrective action has been approved which will enable the DOE to address the problem. A copy of the plan was forwarded to you for your cost estimate.

In your July 31, 1991 letter, you stated you would not do the required mine closure. I would like for you to reconsider your position for the following reasons: 1) as the operator of the mine, you have the best knowledge of all the conditions that exist at the subject mine lease; 2) because of your knowledge, it was determined that you could most effectively perform the required work so as to minimize any impact with reopening the mine should economic conditions improve and DOE approval be granted to continue with the

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activities contemplated by Article I; 3) the DOE is paying for the cost of the corrective action, and at this time is not seeking to recover those costs from you as the operator of the lease; and, 4) the proposed action may not constitute a permanent closure of the mine. In the event that you do not want to perform the required work, the DOE will locate another contractor who will.

Notwithstanding your arguments as to the health risks and your inability to duplicate the EPA findings, the work identified by the DOE has been determined to be necessary to avoid any potential radon or radiological release in excess of the standards set by EPA.

In closing, I do want to recognize the fact that the DOE does believe you have acted in good faith in your past conduct of operating the mining lease. However, we live in an ever changing world and environmental issues are becoming paramount in the world of business and in particular with the DOE. I sincerely hope you will continue your support of the DOE program and cooperate with us in performing the required actions on the subject mining lease.

If you have any questions, please call me at 303/248-6003.

Sincerely,


Robert E. Ivey
Contracting Officer

cc: W Weis - EPA
V Tonc - Geotech
M Olsen - DOE/ID
J Lyle - DOE/ID